

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**OLLIE GREENE, *et al.*,**

**Plaintiffs**

**v.**

**TOYOTA MOTOR CORPORATION, *et al.*,**

**Defendants.**

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**CAUSE NUMBER: 3:11-cv-0207-N**

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**TOYOTA DEFENDANTS' RESPONSE AND BRIEF IN SUPPORT THEREOF TO  
DEFENDANT VOLVO GROUP NORTH AMERICA, LLC'S MOTION TO EXCLUDE  
THE TESTIMONY OF BIOMECHANICS EXPERTS JOSEPH BURTON,  
CATHERINE CORRIGAN AND DAVID VIANO  
REGARDING THE INJURIES OR DEATHS OF THE GREENE CHILDREN**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively "the Toyota Defendants") respond to Defendant Volvo Group North America, LLC's Motion to Exclude the Testimony of Biomechanics Experts Joseph Burton, Catherine Corrigan and David Viano Regarding the Injuries or Deaths of the Greene Children, and show the Court as follows:

Volvo Group North America, LLC ("VGNA") has moved to exclude, among others, any testimony of Dr. Catherine Corrigan ("Corrigan") related to the deaths of the Wesleigh Greene and Wyndell K. Greene, II (the "Greene Children"). VGNA does not question the qualifications of methodology employed by Corrigan in her arriving at her opinions. Instead, VGNA's motion is based solely on relevance grounds. VGNA's request is premature and should be denied.

The Toyota Defendants agree that there are "no claims remaining by any plaintiff in this case arising from the Greene children's injuries or death." Doc. No. 448 at 6. The relief sought by VGNA is the appropriate subject of a motion in *limine*, not a *Daubert* motion. VGNA tacitly admitted as much in the motion when it prefaced its relevancy objection with a statement that "VGNA will be filing case-specific motions in *limine*." *Id.* at 7.

The reason that the request is premature, and the proper subject of a motion in *limine*, is that what evidence will be presented at trial is still unknown. Federal Rule of Evidence 702 states in relevant part that an expert's testimony is admissible when it "will help the trier of fact **to understand the evidence** or to determine a fact in issue." Fed. R. Evid. 702 (emphasis added). While the Toyota Defendants agree with VGNA that the manner and cause of the Greene Children's death is not a fact in issue, Corrigan's testimony may help the jury to understand the evidence, depending upon what evidence is presented. Until evidence is presented, it is impossible to determine whether Corrigan's testimony would assist the jury's understanding of it. The biomechanics of the Greene Children could, for example, undermine the credibility of certain aspects of one or more of the various accident reconstructions. In addition to assisting the jury in understanding the evidence before it, the biomechanics of the Greene Children could also indirectly assist the jury in determining facts that are in issue (e.g. was the Toyota 4Runner's structural design defective and unreasonably dangerous). VGNA's motion to exclude Corrigan's testimony regarding the Greene Children should, therefore, be denied.

WHEREFORE, PREMISES CONSIDERED, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. request

that Volvo Group North America, LLC's Motion to Exclude the Testimony of Biomechanics Experts Joseph Burton, Catherine Corrigan and David Viano Regarding the Injuries or Deaths of the Greene Children be denied, and for such other and further relief to which they may show themselves to be entitled.

RESPECTFULLY SUBMITTED,

*/s/ David P. Stone*

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INC., AND TOYOTA MOTOR SALES,  
U.S.A., INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 7th day of April, 2014.

*/s/ David P. Stone* \_\_\_\_\_